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Twenty-ninth session

SUMMARY RECORD OF THE 606th MEETING

Held at Headquarters, New York,
on Friday, 14 June 1996, at 10 a.m.

Chairman: Mrs. PIAGGI de VANOSSI (Argentina)

CONTENTS

ADOPTION OF THE REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-NINTH SESSION

CLOSURE OF THE SESSION

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96-80820 (E)

The meeting was called to order at 10.45 a.m.

ADOPTION OF THE REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-NINTH SESSION (A/CN.9/XXIX/CRP.1 and Add.1-21)

1. The CHAIRMAN invited the Commission to consider the draft report of the United Nations Commission on International Trade Law on the work of its twenty-ninth session, contained in documents A/CN.9/XXIX/CRP.1 and Add.1 to Add.21.

2. Mr. ILLESCAS (Spain), Rapporteur, introducing the draft report, said that in general the report accurately reflected the discussions conducted during the Commission's twenty-ninth session, and he recommended it for adoption.

Document A/CN.9/XXIX/CRP.1

3. Mr. SEKOLEC (International Trade Law Branch) said that Albania, Kyrgyzstan, Pakistan, South Africa and the Syrian Arab Republic should be added to the list of attending observer States in paragraph 6 and that the Organization of American States should be added to the list of attending intergovernmental organizations in paragraph 7 (b).

4. Document A/CN.9/XXIX/CRP.1, as orally revised, was adopted.

Document A/CN.9/XXIX/CRP.1/Add.1

5. Mr. HOLTZMANN (United States of America) suggested that a number of amendments should be made to document A/CN.9/XXIX/CRP.1/Add.1: first, the phrase "or was a ground for refusing enforcement of an award" should be added after the word "violated" in paragraph 3; second, the phrase "took a stand as to whether it necessarily had to be a national law that governed the arbitral procedure or that the Notes" should be deleted from paragraph 5; third, the phrase "or other provisions" should be added after "arbitration rules" in paragraph 21; and fourth, the third sentence in the quotation in paragraph 21 should be revised to read "Moreover, parties that have agreed on arbitration rules that do not expressly address the issue of confidentiality cannot assume that all jurisdictions would recognize an implied commitment to confidentiality."

6. Document A/CN.9/XXIX/CRP.1/Add.1, as amended, was adopted.

Documents A/CN.9/XXIX/CRP.1/Add.2 to Add.6

7. Documents A/CN.9/XXIX/CRP.1/Add.2 to Add.6 were adopted.

Document A/CN.9/XXIX/CRP.1/Add.7

8. Mr. LLOYD (Australia) suggested that the phrase "which the Commission considered to be good practice and which is provided for in the rules of the Comité maritime international (CMI)", should be added after the word "interchange" in paragraph 17.

9. Mr. RENGER (Germany) said that the introduction of the topic of draft article "x" in paragraph 1 should include a specific reference to the report of the Working Group contained in document A/CN.9/421.

10. Mr. SORIEUL (International Trade Law Branch) said that the secretariat intended to add such a reference to paragraph 1 when it prepared the final version of the report.

11. Document A/CN.9/XXIX/CRP.1/Add.7, as amended, was adopted.

Documents A/CN.9/XXIX/CRP.1/Add.8 and Add.9

12. Documents A/CN.9/XXIX/CRP.1/Add.8 and Add.9 were adopted.

Document A/CN.9/XXIX/CRP.1/Add.10

13. Mr. PHUA (Singapore) proposed that, in paragraph 3 (g), the phrase "and possibly elsewhere" should be added after the phrase "to revise paragraph 39", and that the phrase "and not to create uncertainty by altering traditional laws on paper-based communication" should be added to the end of the paragraph.

14. Mr. SORIEUL (International Trade Law Branch) said that the proposal by the representative of Singapore appeared to conflict with the original intent of the Model Law, which was to bring about changes in traditional laws on paper-based communications.

15. Mr. PHUA (Singapore) said that while his delegation agreed that the Model Law was intended to aid in modernizing laws on communication, it did not believe that the Commission intended to create uncertainty in traditional laws on paper-based communication.

16. Mr. BURMAN (United States of America) suggested that both the comment by the representative of Singapore and the secretariat's reply should be reflected in the report.

17. Mr. SORIEUL (International Trade Law Branch) suggested that the report should indicate that, without prejudice to the changes necessarily introduced by virtue of the Model Law, the Law was not intended to alter the traditional use of paper-based documents or the legal regimes traditionally applicable to such documents. A similar indication would have to be included in the Guide to Enactment of the Model Law.

18. Mr. PHUA (Singapore) said that he supported that suggestion.

19. Document A/CN.9/XXIX/CRP.1/Add.10, as amended, was adopted.

Document A/CN.9/XXIX/CRP.1/Add.11

20. Document A/CN.9/XXIX/CRP.1/Add.11 was adopted.

Document A/CN.9/XXIX/CRP.1/Add.12

21. Mr. LLOYD (Australia), supported by Mr. BURMAN (United States of America), proposed that, in the last sentence of paragraph 11, the words "as the liability of" should be replaced with "concerning" and the words "work on certification authorities" should be replaced with "each new area of work addressed by the Working Group on Electronic Commerce". Those amendments would reflect the United States delegation's earlier proposal that issues involving service providers should be dealt with separately under each of the topics considered by the Working Group.

22. Mr. BURMAN (United States of America) proposed that, in paragraph 2, the sentence "In addition, it was suggested that obtaining the views of the commercial sectors involved would be very important" should be inserted after the first sentence. He also proposed that the last sentence of paragraph 4 should be followed by a new sentence which would read "Contrary views were expressed that, in fact, disharmony had prevailed, and would continue without some new effort at unification." In the first sentence of paragraph 6, he proposed that the words "currently active" should be inserted before the word "agenda" so that the sentence would not imply that no action would be taken on the issues in question.

23. Mr. RENGER (Germany) said that the proposed addition to paragraph 4 would affect the drafting of paragraph 5 and would cause an imbalance in that part of the report by placing too little emphasis on the reservations expressed by delegations.

24. Mr. BURMAN (United States of America) said that he withdrew his proposal to amend paragraph 4.

25. Mr. HERRMANN (Secretary of the Commission) said that the term "currently active agenda" had no definition in the context of UNCITRAL. Paragraph 6 as a whole accurately reflected the decision not to undertake, at the current stage, harmonization work in the area of the international carriage of goods by sea.

26. Mr. BURMAN (United States of America) said that another way of amending paragraph 6 would be to delete the first sentence and to replace the words "Nevertheless, it" in the second sentence with "The Commission".

27. Mr. LLOYD (Australia), supported by Mr. STURLESE (France), said that the first sentence of paragraph 6 was important because it specified that no definite decision had been taken to begin work on the issue; without it, the rest of the paragraph was too positive. He proposed that the word "current" should be inserted before the word "agenda" in the first sentence.

28. Ms. SABO (Observer for Canada) said that she, too, was in favour of retaining the first sentence of paragraph 6. She proposed that the words "for immediate priority" should be added after the word "agenda" to address the concern of the United States of America.

29. Mr. RENGER (Germany) and Ms. CRAGGS (United Kingdom) said that they preferred to leave paragraph 6 unchanged, since it accurately reflected the outcome of the Commission's deliberations on the issue.

30. Mr. BURMAN (United States of America) said that the first sentence conveyed the incorrect impression that the Commission had rejected the idea of doing any work at all on the subject, whereas it had in fact agreed to ask the secretariat to do some preliminary information-gathering.

31. Mr. RENGER (Germany) said that most delegations had rejected the proposal in question and the issue had not been included on the Commission's agenda. The first sentence was therefore correct.

32. Mr. BURMAN (United States of America) said that if the Commission had rejected the proposal outright, it would not have instructed the secretariat to gather information. The report should not imply that the Commission had not authorized any action on the subject.

33. Mr. CHOUKRI (Observer for Morocco), supported by Mr. LLOYD (Australia), proposed that the words "at present" should be added to the first sentence after the word "agenda" to show that the Commission had left open the possibility of including the issue on its agenda in the future.

34. Document A/CN.9/XXIX/CRP.1/Add.12, as amended, was adopted.

Document A/CN.9/XXIX/CRP.1/Add.13

35. Mr. SORIEUL (International Trade Law Branch) said that, in article 17, paragraph 6, the word "such" should be inserted after the words "inapplicable to", as agreed previously by the Commission.

36. Document A/CN.9/XXIX/CRP.1/Add.13, as orally revised, was adopted.

Documents A/CN.9/XXIX/CRP.1/Add.14 to Add.21

37. Documents A/CN.9/XXIX/CRP.1/Add.14 to Add.21 were adopted.

CLOSURE OF THE SESSION

38. After an exchange of courtesies, the CHAIRMAN declared the twenty-ninth session closed.

The meeting rose at noon.